Annual Report 2016/2017

CANADIAN CONSTITUTION FOUNDATION

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Foreword

In our fifteenth year, the Canadian Constitution Foundation again set the standard for effective defence of Canadians' constitutional rights and freedoms. While we continue to grow, with new cases, new research projects, and new on-campus events, we are still driven by our original goal: "to protect the constitutional freedoms of Canadians through education, communication and litigation." These three approaches are not only vital individually but, as our work this year showed, a full defence of the Constitution cannot ignore any of them.

Litigation

Two of our cases drew significant national attention this year, and with good reason: they stand to transform Canada in ways that respect our constitutional rights. Our fight for healthcare freedom squarely tackles the unnecessary and unconstitutional suffering caused by lack of patient choice in Canadian healthcare, while our New Brunswick beer case, which has been taken up by the Supreme Court of Canada, seeks to restore the original vision of free trade across the country in this the 150th Anniversary of Confederation. We also continue to defend the property rights of Canadians against abuses of civil asset forfeiture laws, as well as taking on new cases in defence of free speech and freedom of association.

Communication

This year we reintroduced Freedom Updates as a weekly news-digest highlighting what we are working on and the impact of our work in the news. We also published an original research report examining the constitutional dimensions of governments' attempts to regulate vaping and new non-combustible smoking technologies. Finally, the launch of a new podcast, Runnymede Radio, has made original and thought-provoking discussion of current constitutional and legal issues available to you on the go!

Education

The Runnymede Society completed its hugely successful first full academic year, ensuring rigorous debate and free speech remain central to Canadian legal education. Our third annual Law & Freedom Conference was our best-attended yet and featured an erudite and provocative keynote speech by Chief Justice Glenn Joyal on how 35 years of the Charter of Rights and Freedoms has shaped Canadian society. And our Primary Documents project continues to expand its scope as a unique resource for anyone interested in our country's founding documents and debates.

As we look ahead to next year, our reach within the legal profession, including with practitioners, academics, judges, and law students, has never been wider or deeper. This continued growth, which is made possible by our generous supporters, is critical, as the threats to our constitutional rights from governmental overreach show no signs of going away, or even slowing in the years ahead.

Thank you!

Howard Anglin

Executive Director
Canadian Constitution Foundation

About us

CANADIAN CONSTITUTION FOUNDATION

We are Freedom's Defence Team

The Canadian Constitution Foundation (CCF) protects the constitutional freedoms of Canadians through education, communication and litigation.

We defend:

Individual freedom — the "fundamental freedoms" in section 2 of the Charter:

> Freedom of association;
> Freedom of peaceful assembly;
> Freedom of conscience and religion;
> Freedom of thought, belief, opinion and expression.

Economic liberty: the right to earn a living and to own and enjoy property.

Equality before the law: Section 15 of the Charter of Rights and Freedoms guarantees equal rights and equal opportunities for all Canadians.

Litigation

In this last fiscal year we defended the rights and freedoms of Canadians on many fronts. We're extremely pleased with the success we've had and are looking forward to even more positive news to report in Canada's courtrooms.

Healthcare freedom

After seven years of government delays, this historic trial began in September 2016. Our lawyers have been able to introduce the testimony of more than a dozen compelling witnesses, including doctors, patients, and healthcare experts, the going has been slower than anticipated. Despite counsel's best work, the government has carried its longstanding tactic of delays into the trial. When it began, the entire trial was originally scheduled for six months, but after more than ten months, we are only half way through presenting our evidence, with the Crown's case still to come. This obstructionist strategy has been identified in the media as a cynical attempt to "win" through financial attrition a case they are likely to lose on the merits. We are determined not to let this happen. In April, counsel asked the court to adjourn the case temporarily both to allow us to pursue some interim appeals of evidentiary disputes, to receive more documents from the government, and also to give us more time to raise the funds to see it through to the end. We are hopeful the trial will resume this fall.

Despite the government's frustrating tactics, our lawyers are slowly but surely building the evidentiary case that will show that British Columbia's restrictions on patients' access to timely medical treatment are violating the constitutional rights to "life" and "security of the person" of the thousands of patients languishing on long and growing waiting lists. The fight remains as important as ever. Victory means saving the private clinics that have cared for tens of thousands of patients in BC for almost 20 years. It means real choice for suffering patients. And ultimate victory at the Supreme Court would mean that Canada can finally start tackling the wait lists and the barriers to timely medical treatment that violate the constitutional rights of Canadians every day.

YOUR HEALTH CAN'T WAIT

*The CCF has been raising money and keeping donors up-to-date on this case through **yourhealthcantwait.ca**.*

In 2004, Walid of Kelowna, BC was diagnosed with a degenerative spinal condition. After waiting for more than two years, during which his health deteriorated, his family was forced to seek medical care in the United States to save his ability to walk. Sadly, an operation came too late for Walid and he is now paralyzed below the waist.

Interprovincial Trade

After Gérard Comeau's landmark victory in April 2016 in the New Brunswick provincial trial court, the Crown appealed the decision to the Supreme Court of Canada. We're pleased that the Court has agreed to hear the case and a hearing date has been set for December 7th, 2017. We are busy working with Ian Blue, QC – Canada's leading expert on s.121, our Constitution's so-called "free trade clause," – on preparing the argument for the Supreme Court, enlisting the support of intervenors representing a range of Canadian industries, and on raising the funds to support Mr. Comeau's case.

Gérard Comeau

Our other interprovincial trade case, on behalf Calgary-based importer Artisan Ales against a protectionist tax scheme imposed by the Alberta government to discriminate unconstitutionally against out-of-province beer is also progressing very well. A panel convened under the Agreement on Internal Trade (AIT) heard our arguments against the Alberta scheme in June, 2017 and recently ruled in our favour, finding that Alberta's tax policy violates the AIT. Alberta has indicated it will appeal the ruling and we look forward to defending it on appeal.

Litigation

Civil Forfeiture Abuse

Our involvement in Bruce and Donna Montague's civil forfeiture case has concluded successfully! The Montagues will be able to keep their house, which the government of Ontario had tried to seize. Other personal property that was seized after their convictions for peaceful civil disobedience continues to be returned to them. We are pleased to have fought back and struck a blow against the unconstitutional abuse of civil asset forfeiture.

Donna and Bruce Montague in front of their saved home.

We are still supporting Maggie and Terry Reilly in their long-running case to save two properties they had set aside to provide low-income housing options in Orillia, Ontario. This is the case in which the Government of Ontario seized rental properties from the Reillys based on the claim that some of the tenants' rents had been paid from the proceeds of dealing drugs. Even if this were true (it has never been anything more than an unsubstantiated assumption), there was never any allegation that the Reillys were involved in any criminal activity or even a hint of wrongdoing on their part. We continue to prepare for trial in the autumn, where we will not only fight for fair compensation for the rental properties the government has seized and sold, but also to secure stronger protections for property rights against the abuse of civil forfeiture laws in the future.

Freedom of Association/Religion

In October 2016, we took up the cause of a Calgary Jehovah's Witness congregation and filed an affidavit in support of their application to the Supreme Court of Canada to hear a case in which a divided panel of the Alberta Court of Appeals ruled that courts have the power to review internal membership decisions of religious and other private voluntary organizations.

We believe granting courts the power to review internal membership or disciplinary decisions of private organizations, and specifically religious organizations, constitutes violates both freedom of religion and freedom of association. It would be a significant new intrusion by the state on private, non-state bodies and pose a major threat to the viability of civil society organizations. We are pleased to say that the Supreme Court recently announced that it will review the Alberta court's decision this autumn and we are applying for intervener status to make our constitutional arguments.

Other Constitutional Issues

In January 2017, we filed an intervention at the Supreme Court of Canada in support of a broad, textual application of the Charter right to a jury trial in a case called *Peers and Aitkens v. Alberta*. In Canada, Section 11(f) of the Charter guarantees a jury trial for anyone charged with an offence where the maximum punishment for the offence is imprisonment for five years or a "more severe punishment." Unfortunately, the Court rejected our argument that a prison term of five years less a day plus a multi-million dollar fine is a more severe punishment than a sentence of five years.

This year the CCF also supported Karen MacKinnon in her case challenging the 'defamatory libel' provision in the *Criminal Code of Canada* (Section 301), a provision already struck down as unconstitutional by many provincial courts, including in Alberta. The CCF is disappointed by the Supreme Court's decision and is determined to fight for all Canadians' constitutional right to criticize elected officials.

Education

Vaping Report

In February 2017, we released a report taking a critical look at Canada's e-cigarette laws at all levels of government. The CCF report does not encourage e-cigarette use as a healthy or harmless act for non-smokers, but accepts the growing evidence that it is a less-harmful alternative to traditional cigarettes. The report therefore recommends how government should take a *Charter* rights- and evidence-based approach to e-cigarette laws, one that respects the constitutional rights of Canadians to access less harmful alternatives to combustible tobacco cigarettes.

The Primary Documents project seeks to be the most complete word-searchable electronic repository of documents relating to the Constitution.

The CCF is pleased to announce that in 2016/2017 this project finally went public. Our aim is to make it possible for anyone ---whether student, teacher, lawyer, or judge--- to easily access the entire documentary record of what Canada's leaders---as well as reasonable, well-informed Canadians---were thinking when they adopted the constitutional provisions that govern us today. Only by knowing this can present-day Canadians know the meaning of our constitutional law.

LAW & FREEDOM

2017 CONFERENCE - TORONTO

In 2017 we hosted our most successful Law and Freedom Conference yet at the University of Toronto's Hart House. The keynote speech was delivered Chief Justice Glenn D. Joyal of the Court of Queen's Bench of Manitoba, who spoke about how the *Charter* has shaped Canadian law for good and ill over the last 35 years. The event, which was the best attended in the CCF's history, covered various topics in constitutional law from interprovincial trade and the surveillance state to free speech and civil forfeiture abuse.

RUNNYMEDE SOCIETY

Through on-campus debates and discussion, we ensure that free speech and intellectual diversity remain an active part of Canadian law school life. We provide outstanding support and opportunities for intellectual enrichment, for networking, and for professional development, which includes providing members an opportunity to meet professors, practitioners, and judges supportive of our mission.

Joanna Baron began her full-time post as Runnymede Society Director in February 2016. Joanna has established Runnymede Society chapters in the following University's law schools.

- **Dalhousie University**
- **University of New Brunswick**
- **Université de Montréal**
- **McGill University**
- **Osgoode Hall Law School**
- **University of Toronto**
- **University of Windsor**
- **Queen’s University**
- **University of Ottawa**
- **Lakehead University**
- **University of Alberta**
- **University of Saskatchewan**
- **University of Calgary**

Seven of these chapters have designated faculty advisors and we have engaged with faculty at the other law schools and are hoping to identify formal faculty advisors for the other chapters as well. We also are in contact with students at University of British Columbia, Université de Sherbrooke and University of Victoria and will be establishing chapters there in Fall 2017.

Student Leadership Conference

The Runnymede Society hosted the first Student Leadership Conference in Blue Mountain, Ontario on August 26-28th, 2016.

The conference was a hybrid of familiarizing the students with the nuts and bolts of chapter-running, providing an opportunity for the group to network and socialize, and to invite esteemed jurists and academics to provide discussion and reflection on legal issues and the rule of law. We hosted:

- **Prof. Malcolm Lavoie (University of Alberta)**, who led a discussion on Friedrich Hayek and the rule of law;
- **Justice Peter Lauwers (Court of Appeal for Ontario)**, who led a discussion on “Liberal Pluralism and the Challenges of Religious Diversity” as well as a critical engagement with the recent Court of Appeal decision in Law Society of Upper Canada v. Trinity Western University;
- **Asher Honickman (Partner, Matthews Abogado LLP, Advocates for the Rule of Law)**, on constitutional approaches to s. 7.

Howard Anglin also gave a speech on judicial policymaking and the rule of law. Feedback from presenters and student attendees was overwhelmingly positive. The ‘retreat’ format was particularly useful in fostering connections and camaraderie amongst the students and between students and presenters, as well as allowing Joanna to spend time with each of the students and discuss their ideas for their chapters.

Runnymede Society

Runnymede Society chapters hosted more than 20 events in 2016 including:

University of Toronto, October 11, 2016: Debate: Electoral Reform (Andrew Coyne, National Post, Peter Loewen, Director of the School of Public Policy and Governance) [Over 70 students attended]

McGill University, October 19, 2016: How American Judges Judge: The Post-New Deal Evolution in Interpretive Method, and Where Are We Now?, with the Hon. Justice Diane Sykes, US Court of Appeals of the Seventh Circuit [Approx. 120 students attended]

University of Windsor, November 2, 2016: Debate: Trinity Western University, Religious Liberty and Equality (John Sikkema, Christian Legal Fellowship, Ranjan Agarwal, Bennett Jones LLP, Prof. Richard Moon) [Approx. 80 students attended]

University of Alberta, November 28, 2017: Debate: Physician-Assisted Suicide with Prof. Margaret Somerville and Prof. Erin Nelson (students will also be meeting for a reading group several times in advance of Prof Somerville's visit to read and discuss her new book, "Bird on an Ethics Wire"). [Approx. 100 students attended]

Université de Montréal, December 1, 2017**:** Lecture with the Hon. Justice Marc Nadon, Federal Court of Appeal, "Judging and the Rule of Law" [Approx. 60 students attended]

A Runnymede debate between Jordan Peterson and Queen's Law Prof. Bruce Pardy was viewed over 100,000 times online.

In 2017 we were thrilled to begin Runnymede Radio, a new legal podcast created and hosted by Joanna Baron, the National Director of the Runnymede Society, a project of the CCF. Runnymede Radio will explore broad questions of law, politics, culture, and education, and occasionally introduce an international perspective that may challenge our Canadian way of thinking about the law and the constitution.

Some of our first guests included Chief Justice Glenn Joyal of the Manitoba Court of Queen's Bench, Dr. Leonid Sirota of the award-winning Double Aspect Blog, and Professor Jordan Peterson of the University of Toronto.

Runnymede Radio is available for free streaming or download on iTunes, Stitcher, or wherever you listen to your podcasts. You may also listen at the Runnymede Society's website (runnymedesociety.ca/runnymederadio).

Communication

In 2016/2017 the CCF spread the message of freedom and raised awareness on government infringement of rights, by publishing pieces in national newspapers, online blogs and by making frequent appearances on radio and television.

- In 2016/2017, CCF staff wrote articles which appeared over 80 times online and in print in publications such as the National Post, Globe and Mail, CBC, and Sun Media. These articles raised the profile of the cases we support and ensured our voice was heard on a variety of other constitutional issues.

- CCF staff appeared over 70 radio and television programs in 2016/2017. Aside from talking about CCF-related issues, these media appearances also featured our staff providing commentary on a whole range of constitutional issues outside our present work. The CCF is committed to becoming the new ‘go to’ organization for news media outlets to get comments on important constitutional and legal issues of the day.

- The CCF and the cases we support were mentioned more than 250 times online and in print by news outlets.

- We grew our social media following considerably in 2016/2017. The CCF is on track to be the most followed Canadian civil liberties organization on Facebook in 2018.

Audited Financials

Revenue	
Contributions and grants	$1,052,842
Restricted contributions	$907,205
Other revenue	$5,071
Interest	$2,137
Total	$1,967,255

Expenses	
Project activities	$978,143
Staff salaries	$598,011
Office and administration	$97,691
Travel and fundraising	$49,211
Amortization and realized loss	$9,105
Total	$1,732,161

CANADIAN CONSTITUTION FOUNDATION

Contact us

The Canadian Constitution Foundation (CCF) is a registered charity, independent and non-partisan. We defend the constitutional rights and freedoms of Canadians in the courts of law and public opinion.

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Charitable Number: 86617 6654 RR0001
The CCF is also a 501(c)(3) public charity in the U.S.

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